



March 22, 1999

Mr. Richard D. Monroe
General Counsel
Texas Department of Transportation
125 East 11th Street
Austin, Texas 78701-2483

OR99-0785

Dear Mr. Monroe:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 123092.

The Texas Department of Transportation (the "department") received a request for the following:

- (A) Is the Texas Department of Transportation responsible for the maintenance of the traffic signals at US59, Loop South @ 1500 W. Church St. (US 190), in Livingston, Polk County, Texas?¹
- (B) Was there any report of a signal malfunction at the above location on 7/10/98 at approximately 11:50 P.M.?

You submitted to this office responsive information and you claim that the requested information is excepted from disclosure under section 552.103 of the Government Code. We have considered the exception you claim and reviewed the submitted information.

¹The Act does not require a governmental body to prepare answers to questions or to do legal research. See Open Records Decision Nos. 563 (1990) (considering request for federal and state laws and regulations), 555 (1990) (considering request for answers to fact questions.)

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.² Thus, under section 552.103(a) a governmental body's burden is two-pronged. The governmental body must establish that (1) litigation is either pending or reasonably anticipated, and that (2) the requested information relates to that litigation. See *University of Tex. Law Sch. v. Texas Legal Found.*, 958 S.W.2d 479, 481 (Tex. App.—Austin 1997, no pet.); *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.—Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 at 4 (1990).

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 at 4 (1986). Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.³ Open Records Decision No. 555 (1990); see Open Records Decision No. 518 at 5 (1989) (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. See Open Records Decision No. 331 (1982). Further, the fact that a potential opposing party has hired an attorney who makes a request for information does not establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983).

Based on the information presented, we conclude that you have failed to meet the requisite showing that litigation is reasonably anticipated and, therefore, you must release the information to the requestor.

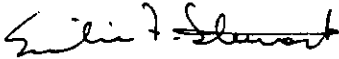
²552.103(a) excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

³In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, see Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, see Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, see Open Records Decision No. 288 (1981).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Sincerely,

A handwritten signature in cursive script, appearing to read "Emilie F. Stewart".

Emilie F. Stewart
Assistant Attorney General
Open Records Division

EFS\nc

Ref: ID# 123092

Enclosures: Submitted documents

cc: Ms. Lynda Burchett
1001 Texas Avenue, Suite 940
Houston, Texas 77002
(w/o enclosures)